

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING NOTICE OF INTENT TO SEEK COMPENSATION  
BY THE BUILDING INDUSTRY INSTITUTE**

On October 10, 2001, the Building Industry Institute (BII) filed a Notice of Intent (NOI) to claim compensation for participation in this proceeding pursuant to Public Utilities Code Section 1801 et seq.<sup>1</sup>

In consultation with the Assigned Commissioner, I rule that BII has not satisfied the requirement that its members will suffer significant financial hardship from participating in this proceeding, and therefore is ineligible for intervenor compensation.

**Discussion**

Section 1804(a)(2)(b) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. As BII states, Section 1802(g) defines financial hardship as a state in which the *customer* "cannot afford,

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code.

without undue hardship, to pay the cost of effective participation.” For a group or organization, Section 1802(g) defines financial hardship as a state in which “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in this proceeding.”

BII states in the NOI that its participation in this proceeding presents a significant financial hardship because the economic interest of its individual members is small in comparison to the costs of effective participation. BII does not attempt – presumably because it cannot – to establish that the customers it represents (*i.e.*, the individual BII members) cannot afford, without undue hardship, to pay the cost of effective participation. (*See* Section 1802(g) and 79 CPUC 2d at 650 and 676-77.) BII’s members, it states, are home builders and developers. It also serves the 6,000 members of the California Building Industry Association (CBIA). According to BII, CBIA members produce nearly 80% of all the new homes in California each year. It states that California, with over 100,000 new homes each year, is the largest producer of new homes in the nation. Clearly, paying the \$121,540 BII has budgeted for participating in this proceeding – less than the cost of one of those 100,000 homes – would not cause BII’s members financial hardship.<sup>2</sup>

Therefore, BII bases its financial hardship claim on the assertion that the economic interest of individual BII members is small in comparison to the costs of effective participation in this proceeding. It claims that this comparison should be based on the assertion that “a 10% improvement in energy savings for each new home could significantly reduce utility bills for the homeowner over

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<sup>2</sup> See D.93-11-020.

the life of the building. The value of these savings *would far exceed* the cost of BII's participation in this proceeding." (BII at 5, emphasis added.) However, this assertion is the opposite of what the statute requires. BII is saying that energy savings, and thus benefits to its members in helping create those savings, are high in proportion to the cost of BII's participation in this proceeding. In contrast, the statute requires that members' gains be small in proportion to the cost of participation.

Moreover, it is far from clear that BII can change its NOI to meet the standard. Its membership has significant economic interest in the outcome of this proceeding, as it concedes. It states that its prior energy efficiency work caused 85,000 homes to be built "to a new standard of energy excellence."

If BII can demonstrate that the revenues or profits to its members are *de minimis* in relationship to each member's proportionate share of the \$121,540 BII has budgeted for participating in this case, I might be persuaded otherwise. However, it appears that BII will be unable to do so. BII may submit such evidence within 10 days of this Ruling's mailing if it believes it can meet the financial hardship standard. If it does not do so, this Ruling will become effective on the 11<sup>th</sup> day following its mailing. If it submits such evidence, I will determine in a subsequent Ruling whether it meets the hardship test.

Therefore, **IT IS RULED** that Building Industry Institute is not eligible for intervenor compensation in this proceeding because it cannot meet the requirement that its members will suffer significant financial hardship from participating. If, within 10 days of this Ruling's mailing, BII submits further evidence of such hardship, I will consider such evidence in a supplemental

Ruling. If it does not submit such evidence, this Ruling will become effective on the 11<sup>th</sup> day following its mailing.

Dated June 14, 2002, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation by the Building Industry Institute on all parties of record in this proceeding or their attorneys of record.

Dated June 14, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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